

**SECOND AMENDMENT TO CONTRACT TO CREATE A CIVIL RIGHTS  
MURAL BETWEEN THE CITY OF DURHAM AND BRENDA MILLER  
HOLMES**

This contract amendment ("Amendment") is dated and entered into as of \_\_\_\_ day of March, 2014, by the City of Durham ("City") and Brenda Miller Holmes ("Grantee").

The City and the Grantee entered into a contract titled "Contract to Create a Civil Rights Mural between the City of Durham and Brenda Miller Holmes," dated July 20, 2012. That contract is referred to as the "Original Contract." The Original Contract states "Pursuant to this Agreement, the Grantee, Brenda Miller Holmes, will oversee the design, creation and delivery of a mural (hereinafter, the "Project"), to be located on the eastern exterior wall of a building located at 112 W. Main Street in Durham or at such other location as may be mutually agreed by the City and the Grantee." Since the execution of the Original Contract, the building at 112 W. Main Street changed ownership and the new owners have indicated that, because of planned usage of the building affecting the wall in question, they are not willing to make the wall available as a location for the Civil Rights Mural. The parties executed a contract amendment dated July 20, 2013 titled, "Amendment to Contract to Create a Civil Rights Mural between the City of Durham and Brenda Miller Holmes," (the "First Amendment") whereby the date for completion of the contract was extended to July 20, 2014. On February 10, 2014, at a meeting of the Durham County Board of County Commissioners, the Grantee received approval by the Board of County Commissioners of Durham County for the mural to be located on the west wall of the Durham Convention Center, assuming concurrent approval by the City. The Original Contract is hereby amended as follows:

1. In Section 1, *Background and Purpose*, delete the phrase, "112 W. Main Street" and insert "west exterior wall of the Durham Convention Center, 201 Foster Street, pursuant to the authorization given by the County Commissioners on the 10<sup>th</sup> day of February, 2014 and the City Council on the \_\_\_\_ day of March, 2014."
2. After Sec. 11, *Miscellaneous*, add the following new section 12:

Sec. 12. *Rights in the Final Work*. (a) Brenda Miller Holmes (referred to in this Section 12 as the "Artist") hereby irrevocably grants, transfers, conveys, assigns and sets over to City, and its successors and assigns, the entire right, title, and interest in perpetuity in and to the Final Work in the United States and worldwide, including without limitation all contents thereof, all adaptations, derivations and versions thereof, and the unencumbered right to exercise such rights in all media and by any manner or means, whether now or hereafter devised, as well as the sole and exclusive right, title and interest in the ownership of the copyrights therein in the United States and worldwide, the right to secure copyright registration therein and to any resulting registration in City's name as claimant, and all renewals and extensions thereof, and any moral rights therein under copyright laws, including but not limited to the Visual Artists Rights Act of 1990, together with all related past, present and future causes of action related to the Final Work, whether asserted or not, the right to enforce the rights to said Final Works, the rights to all income derived from said Final Work and any and all interests, claims, and rights for damages, profits, and other awards by reason of any past infringement,

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unauthorized use, misappropriation, or other violation of the Final Work, unfair competition and/or deceptive trade practices related to the Final Work, and all other related causes of action, and the right to sue therefor, for City's own use and behalf and for the use and behalf of its successors and assigns or other legal representatives; said Final Work to be held and enjoyed by City, its successors and assigns, as fully and entirely as the same would have been held and enjoyed by Artist if this assignment had not been made. Artist hereby unconditionally waives all moral rights and/or non-assignable rights relating thereto to City and any future owner, successor, donee or transferee of City, including without limitation rights under the Visual Artists Rights Act of 1990 and any and all rights of identification of authorship or reversion and any and all rights of approval, restriction or limitation on use or subsequent modifications, including, but not limited to, any and all rights of approval or consent with respect to any modification, alteration, disassembly, removal, distortion or mutilation of the Final Work.

(b) Artist further agrees to execute and deliver at the request of the City any and all other papers, instruments and assignments and to perform any other reasonable acts the City may require in order to vest all of Artist's rights, title and interest in and to the Final Work in the City (i) as are deemed necessary by City or by the governmental agencies having jurisdiction over said Final Work to effect the transfer to City, its successors and assigns of all of Artist's right, title, and interest in and to the Final Work, including, without limitation, all copyrights and moral rights therein, (ii) for maintaining and perfecting the City's rights to the Final Work, and (iii) as may be or become necessary for obtaining, maintaining, or protecting said Final Work.

(c) Notwithstanding the aforementioned transfer and assignment of all rights in the Final Work to the City as set forth in this Section 12, the City hereby grants a perpetual, non-exclusive and royalty-free license to the Artist to use, display, exhibit, make, and distribute copies of, photograph, video, and otherwise reproduce images of the Final Work for commercial, non-commercial or educational purpose. This license is non-transferrable to third-parties except for non-commercial, educational or documentary use.

3. After Sec. 12, *Rights in the Final Work*, add the following new section 13:

Sec. 13. *E-Verify Compliance*. The Contractor represents and covenants that the Contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). In this E-Verify Compliance section, "contractor," "its subcontractors," and "comply" shall have the meanings intended by NCGS 160A-20.1(b). The City is relying on this section in entering into this contract. The parties agree to this section only to the extent authorized by law. If this section is held to be unenforceable or invalid in whole or in part, it shall be deemed amended to the extent necessary to make this contract comply with NCGS 160A-20.1(b).

IN WITNESS THEREOF, the City and the Grantee have caused this contract amendment to be executed under seal themselves or by their respective duly authorized agents or officers.

CITY OF DURHAM

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Durham and Brenda Miller Holmes*

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_

Preaudit Certificate, if required:

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BRENDA MILLER HOLMES

By: \_\_\_\_\_

State of \_\_\_\_\_

ACKNOWLEDGMENT BY BRENDA  
MILLER HOLMES

County of \_\_\_\_\_

I, a notary public in and for the aforesaid county and state, certify that Brenda Miller Holmes, personally appeared before me this day and acknowledged the execution of the foregoing contract or agreement with the City of Durham. This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public